IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

R.S.A. No.633 of 1993
Date of Decision: 7.12.2006

Birkhe Ram and others.

..... Appellant

Versus

Ram Karan and others.

..... Respondents

CORAM: Hon'ble Mr.Justice Mahesh Grover

....

Present: None for the appellants.
None for the respondents.

....

Mahesh Grover,J.

The present appeal has been filed by the defendants against judgment and decree dated 18.1.1993 of Additional District Judge, Rohtak (hereinafter described as `the lower Appellate Court') vide which judgment and decree dated 16.3.1991 passed by the Sub Judge Ist Class, Bahadurgarh (for brevity, `the trial Court') were reversed.

The facts of the case are that Ram Karan (respondent no.1 herein) filed a suit for possession by way of pre-emption, inter alia, contending that vendors- Maya Ram and Chhange Ram (arrayed as respondent nos. 2 and 3 herein) were co-sharers along with him to the extent of 1/6th share in the agricultural land comprised in khewat no.52/54, khata nos.101 to 107 as detailed in para no.1 of the plaint. Respondent nos. 2 and 3 sold khasra nos. 78 to 84 measuring 7 Bighas 5 Biswas out of their share

to the present appellants vide sale deed dated 23.8.1988 for a sale consideration of Rs.4,00,625/-, but to defeat the right of pre-emption, a fictitious sale consideration of Rs.4,98,437/- was shown in the sale deed. The sale was sought to be pre-empted by respondent no.1 on the ground that he was co-sharer along with the vendors of the suit land.

The suit was contested by the appellants, who were the vendees by filing a joint written statement. The factum of respondent nos. 2 and 3 being co-sharers with respondent no.1 was denied and it was pleaded that the vendors had inherited the suit land from Smt. Bhagwani widow of Chandgi Ram during her life time and these khasra numbers had devolved upon Smt. Bhagwani by way of private partition prior thereto and since Smt. Bhagwani had become owner of her share of the property, she was in exclusive and separate possession of the said khasra numbers. That apart, the plea of bona fide purchasers was also raised by the appellants and it was pleaded that the sale consideration of Rs.4,98,437/- was true and correct upon which they had incurred an expenditure of Rs.62315/- on purchasing stamps and getting registration etc. done . It was also pleaded that the sale was effected in the presence of the plaintiff-respondent no.1.

On the pleadings of the parties, the following issues were framed:-

1. Whether plaintiff has superior right of pre-emption to pre-empt the suit land, as alleged?OPP
2. What was the market value of the suit land?OPP
3. Whether the sale consideration was paid in good faith?OPP
4. Whether the suit is not maintainable in the present form?OPD

5. Whether the plaintiff is estopped from filing the suit by his act and conduct?OPD

6. Whether the defendants are entitled for special costs?OPD

7. Relief.

The learned trial Court, after examining the evidence before it, dismissed the suit of respondent no.1.

In appeal, the findings of the trial Court were upset and the suit of respondent no.1 was decreed subject to payment of Rs.4,98,437/- as sale consideration plus an amount of Rs.62315/- as stamp charges and another amount of Rs.501.50 as registration charges. This total amount of Rs.5,61,253/- inclusive of the amount deposited as 1/5th pre-emption money was directed to be paid within a period of two months from the date of passing of the decree, failing which the appeal was to be deemed to have been dismissed.

It is the aforesaid decree passed by the lower Appellate Court which has been assailed by the appellants.

No one has put in appearance on behalf of the parties.

A perusal of the impugned judgment and the records reveals that Smt. Bhagwani from whom the vendors had derived the title by way of inheritance was shown as Hissedar (co-sharer) with respondent no.1 and were never reflected as exclusive owners of the suit land, even though they may have been in possession thereof exclusively. There is no evidence to suggest that any partition had taken place. The revenue record in the shape of jamabandis also conclusively reflects that status of respondent nos. 2 and 3 along with respondent no.1 was that of a co-sharer to the extent of 1/6th share which was also the share of Smt. Bhagwani Devi.

The Hon'ble Supreme Court in (2001) 8 S.C.C. 24 – Shyam Sunder and others Versus Ram Kumar and another, has observed as under:-

" The court has no option but to grant decree of pre-emption where there is a sale of a property by another co-sharer. And for that reason the courts consistently have taken the view that where there is a sale of holding or property by a co-sharer, the right of pre-emption is required to be settled at the earliest either on the pre-emptor's proving his qualification to pre-empt on the date of the sale, on the date of filing of suit, and on the date of decree of the court of first instance or the vendee improving his status till the adjudication of the suit for pre-emption and after adjudication of the suit any loss of qualification by the pre-emptor or vendee improving his status equal or above to right of pre-emptor is of no consequence.

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In Hans Nath v. Ragho Prasad Singh, AIR 1932 PC 57, the Privy Council held that a pre-emptor to maintain a suit for pre-emption is required to prove his right of pre-emption on three important dates. The claimant must possess right of pre-emption on the date of sale. The claimant must possess the same right on the date when the suit is instituted and that right should continue to exist on the date of adjudication of the suit. However, it is a matter of no consequence whether the trial court decrees or dismisses the suit.

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It has also been the consistent view of the Privy Council

and various High Courts that a pre-emptor must possess qualification to pre-empt a sale on the date of decree of the court of first instance only for maintainability of the suit although it is immaterial that the pre-emptor loses the right of pre-emption after the adjudication of the suit either by his own act or the vendee improving his status equal to that of the pre-emptor during pendency of appeal filed against the decree of the trial Court. This view of law is in consonance with the object behind the right of pre-emption and held the field for over a century with which we are in respectful agreement, as nothing has been shown which may persuade to take a contrary view and disturb the settled law."

Thus, the status of the vendors on the date of sale and subsequent thereto was that of a co-sharer.

No fault can, therefore, be found with the findings of the learned lower Appellate Court and the present appeal being devoid of any merit is liable to be dismissed. Ordered accordingly.

However, in the facts and circumstances of the case, respondent no.1 is directed to deposit a sum of Rs.5,61,253/- as determined by the learned lower Appellate Court inclusive of the already deposited amount as 1/5th pre-emption money along with interest at the rate of 9% per annum from the date of filing of the suit till the date of passing of the present decree within a period of two months from today, failing which his plea shall be deemed to have been dismissed.

December 07,2006 (Mahesh Grover)
"SCM" Judge